

## Message Text

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ORIGIN ARA-06

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TO AMEMBASSY QUITO IMMEDIATE

C O N F I D E N T I A L STATE 239761

LIMDIS

E.O. 11652:GDS

TAGS: ENRG, PFOR, EC

SUBJECT: GULF DISPUTE

1. THE FOLLOWING IS THE VERBATIM TEXT OF THE DRAFT GULF  
LETTER OF ASSURANCE:

QUOTE: LETTER OF ASSURANCE FROM THE GOVERNMENT OF THE  
REPUBLIC OF ECUADOR TO THE GOVERNMENT OF THE UNITED STATES  
OF AMERICA.

THE GOVERNMENT OF THE REPUBLIC OF ECUADOR HEREBY GIVES ASSU-  
RANCES TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
THAT THE GOVERNMENT OF ECUADOR UNDERTAKES PURCHASE OF ALL OF  
THE PARTICIPATION OF ECUADORIAN GULF OIL COMPANY (GULF),  
INCLUDING RIGHTS, OBLIGATIONS AND PROPERTIES OF GULF, HELD  
OR UNDERTAKEN BY IT IN ORDER TO PERFORM THE CONTRACT SIGNED  
ON 6 AUGUST 1973, AS MODIFIED BY THE "ACTA- SIGNED ON 14  
JUNE 1974; THE ASSIGNMENT AND TRANSFER OF THE PARTICIPATION  
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SHALL BECOME OPERATIVE UPON THE EFFECTIVE DATE OF TRANSFER.

THE GOVERNMENT OF ECUADOR WILL PAY GULF A JUST PRICE FOR THE  
ABOVE DESCRIBED PARTICIPATION IN ACCORD WITH THE LAWS OF

ECUADOR AND THE RULES OF INTERNATIONAL LAW. IN VIEW OF THE SPECIAL CIRCUMSTANCES RELATED TO THIS ACQUISITION, THE PRICE

TO BE PAID SHALL COMPRISE THE FOLLOWING:

A. A SUM EQUAL TO THE NET OUTSTANDING AND UNRECOVERED INVESTMENTS MADE BY GULF IN ECUADOR PURSUANT TO THE SAID CONTRACT OF 6 AUGUST 1973 AND THE PREDECESSOR CONTRACTS CITED IN DECREE 925 OF 4 AUGUST 1973, SAID SUM WILL BE ESTABLISHED FOR THOSE INVESTMENTS EXISTING ON THE EFFECTIVE DATE OF TRANSFER ACCORDING TO THE BOOKS OF ACCOUNT OF GULF MAINTAINED IN ACCORD WITH LAWS OF ECUADOR IN EFFECT ON THE DATE OF THESE ASSURANCES.

B. SATISFACTION BY GULF TO THE GOVERNMENT OF ECUADOR AND ITS ENTITIES AND SATISFACTION BY THE LATTER TO THE FORMER OF THE RESPECTIVE OBLIGATIONS OF EACH TO THE OTHER AND PAYMENT OF THE NET SUM DUE BY THE NET DEBTOR, AS DETERMINED PURSUANT TO ANNEX NO. 1.

THE GOVERNMENT OF ECUADOR WILL PROMPTLY PAY THE PRICE DETERMINED IN ACCORDANCE WITH THE PRECEDING PARAGRAPH IN US DOLLARS BY EITHER A LUMP SUM PAYMENT DUE ON THE FIRST BUSINESS DAY AFTER THE EFFECTIVE DATE OF TRANSFER OR BY INSTALLMENT PAYMENTS UPON SUCH DATES WITHIN A PERIOD AND AT INTEREST RATES IN CONFORMITY WITH EXISTING INTERNATIONAL BANKING PRACTICES TO THE TRANSACTION SET FORTH IN THESE ASSURANCES.

THE EFFECTIVE DATE OF TRANSFER SHALL BE 2400 HOURS, 31 DECEMBER 1976. DOCUMENTS FOR IMPLEMENTATION OF THESE ASSURANCES SHALL BE SIGNED ON/OR BEFORE 31 OCTOBER 1976. DOCUMENTS OF IMPLEMENTATION SHALL PROVIDE FOR:

A. AUDIT PROCEDURES REQUIRED TO DETERMINE THE NET OUTSTANDING UNRECOVERED INVESTMENT MENTIONED ABOVE.

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B. PROCEDURE FOR VERIFYING INVENTORIES OF CRUDE OIL AND PRODUCTS AND STOCKS OF EQUIPMENT, MATERIALS AND SUPPLIES AS OF THE EFFECTIVE DATE OF TRANSFER.

C. PROCEDURE BY WHICH GULF PARTICIPATION WILL BE DELIVERED TO CORPORATION ESTATAL PETROLERA ECUATORIANA (CEPE).

D. TERMS AND CONDITIONS OF ANY PAYMENTS BY EACH PARTY; TERMS AND CONDITIONS OF PURCHASE BY GULF OF CRUDE OIL AND/OR PRODUCTS.

ANNEX NO. 1 TO THE LETTER OF ASSURANCES

A. BETWEEN THE DATE OF THESE ASSURANCES AND THE EFFECTIVE

DATE OF TRANSFER, GULF SHALL COMPLY WITH OBLIGATIONS WHICH  
ARISE FROM OPERATIONS PURSUANT TO THE CONTRACT OF 6  
AUGUST 1973, AS MODIFIED, AND WHICH CORRESPOND TO ITS  
PARTICIPATION AND CEPE SHALL THEREUPON UNDERTAKE THE  
OBLIGATIONS WHICH ARISE FROM OPERATIONS PURSUANT TO THE  
SAME CONTRACT AND WHICH CORRESPOND TO THE PARTICIPATION  
ACQUIRED IN ACCORD WITH THESE ASSURANCES.

B. WITH RESPECT TO OBLIGATIONS OTHER THAN THOSE SET FORTH  
IN PARAGRAPH NO. 1 ABOVE, DETERMINATION SHALL BE MADE OF  
THE SUMS OWING BY GULF TO THE GOVERNMENT OF ECUADOR AND/OR  
ENTITIES AND SUMS OWING BY THE GOVERNMENT OF ECUADOR AND/OR  
ITS ENTITIES TO GULF FOR THE FOLLOWING CONCEPTS:

INCOME TAXES  
PROFIT SHARING BY LABOR  
ROYALTIES  
GOVERNMENT PARTICIPATION IN PIPELINE CHARGES  
CENTRAL BANK COMMISSIONS  
EXPORT TAX  
TAX FOR INSTITUTO DE CREDITO EDUCATIVO Y BECAS  
EXCHANGE DIFFERENTIALS  
CRUDE OIL ACQUISITIONS  
ACTA 14 JUNE 1974  
RELIQUIDATIONS OF COCA PAYMENT  
CEPE INDEBTEDNESS RELATED TO ITS 35 PARTICIPATION AND  
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PIPELINE CHARGES.

C. THE GOVERNMENT OF ECUADOR AND/OR ITS ENTITIES SHALL  
PRESENT TO GULF LIKEWISE GULF SHALL PRESENT, A STATEMENT  
OF ITS CLAIMS WITH RESPECT TO EACH OF THE CONCEPTS MEN-

TIONED IN PARAGRAPH NO. B ABOVE ON/OR BEFORE 30 OCTOBER  
1976.

D. AUTHORIZED REPRESENTATIVES OF EACH PARTY SHALL MEET  
NO LATER THAN 15 NOVEMBER 1976, AND SHALL WITHIN THE NEXT  
FIVE WORKING DAYS DISCUSS THE CLAIMS PRESENTED IN ACCORD  
WITH PARAGRAPH NO. C. THE STATEMENT OF A CLAIM, OR ANY  
ASPECT THEREOF, WHICH IS ACCEPTED BY THE OTHER PARTY  
SHALL CONSTITUTE THE FINAL DETERMINATION OF THE CLAIM OR  
ASPECT.

E. AT THEIR MEETINGS PURSUANT TO PARAGRAPH NO. D, THOSE  
STATEMENTS OF CLAIMS NOT ACCEPTED AS FINAL BY THE PARTIES  
SHALL BE DETERMINED IN ACCORD WITH THE FOLLOWING PROCEDURE:

(1) ON OR BEFORE 30 OCTOBER 1976, GULF SHALL PROPOSE A

LIST OF FIVE INTERNATIONAL AUDITING FIRMS IN ADDITION TO THE FIRMS OF ARTHUR YOUNG AND CO. AND PEAT MARWICK MITCHELL AND CO. ON OR BEFORE 15 NOVEMBER 1976, THE GOVERNMENT SHALL SELECT ONE OF THE SEVEN AUDITING FIRMS. THE AUDITING FIRM SO SELECTED SHALL, PURSUANT TO CONTRACT AT PREVAILING AUDITING RATES FOR WORK OF THE CHARACTER OF EACH CLAIM, BE ENGAGED TO PERFORM AN AUDIT TO DETERMINE THE FACTS OF EACH CLAIM SUBMITTED TO AUDIT. THE COST OF THE AUDIT SHALL BE SHARED EQUALLY BY GOVERNMENT OF ECUADOR AND GULF.

(2) THE AUDIT SHALL COMMENCE NO LATER THAN 1 DECEMBER 1976 THE AUDIT FOR CLAIMS ARISING PRIOR TO 1 JANUARY 1976 SHALL BE COMPLETED BEFORE THE EFFECTIVE DATE OF TRANSFER. THE AUDIT FOR CLAIMS ARISING AFTER 31 DECEMBER 1975 SHALL BE COMPLETED NOT LATER THAN 31 MAY 1977.

(3) THE FACT RELEVANT TO A CLAIM AS DETERMINED BY AUDITS  
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SHALL BE FINAL.

(4) IN THE EVENT THE PARTIES ARE UNABLE TO AGREE UPON THE VALIDITY OF A CLAIM OR QUESTIONS OF LAW RELATED TO SUCH CLAIM, EITHER PARTY MAY GIVE NOTICE OF SUCH DISAGREEMENT TO THE OTHER PARTY, WHICH NOTICE SHALL BE GIVEN NO LATER THAN 1 DECEMBER 1976 AND SHALL STATE THE QUESTIONS OF LAW IN CONTROVERSY. WITHIN THE NEXT FIVE CALENDAR DAYS AFTER GIVING SUCH NOTICE, THE NOTIFYING PARTY SHALL APPOINT AN EXPERT OF ITS CHOICE TO DETERMINE THE QUESTIONS STATED IN THE NOTICE. THE OTHER PARTY SHALL HAVE FIVE ADDITIONAL CALENDAR DAYS TO EITHER ACCEPT THE EXPERT APPOINTED BY THE NOTIFYING PARTY AS THE SOLE EXPERT IN THE CASE OR APPOINT ITS OWN EXPERT, IN WHICH CASE THE TWO EXPERTS SHALL PROCEED TO DETERMINE THE QUESTIONS OF LAW. IN THE EVENT THE TWO EXPERTS DO NOT AGREE, THEN A THIRD EXPERT SHALL BE CHOSEN BY THE TWO EXPERTS. THE EXPERT OR EXPERTS SHALL CONSIDER AND DECIDE ONLY THOSE QUESTIONS OF LAW PRESENTED BY THE NOTIFYING PARTY AND THE RESPONDING PARTY. THE DECISION OF AN EXPERT, OR OF THE MAJORITY OF A BOARD OF EXPERTS, CONSTITUTED IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE FINAL.

NO CLAIMS IN ADDITION TO THOSE SET FORTH AND DETERMINED AS ABOVE SHALL BE MADE BY EITHER PARTY; EACH PARTY SHALL BE DEEMED BY VIRTUE OF ITS PARTICIPATION IN THESE ASSURANCES TO HAVE WAIVED ALL CLAIMS OTHER THAN THOSE DETERMINED IN ACCORD WITH THE PROVISIONS OF THIS ANNEX NO. 1 AND THOSE SET FORTH IN DOCUMENTS SIGNED PURSUANT TO THESE ASSURANCES AND IN DOCUMENTS OF IMPLEMENTATION. END QUOTE.

2. FOLLOWING CHANGES WERE PROPOSED BY DEPARTMENT AND ACCEPTED BY LUCAS.

(A) FIRST SENTENCE OF FIRST PARA. WOULD BE AMENDED TO READ: "THE GOVERNMENT OF THE REPUBLIC OF ECUADOR, HAVING TAKEN NOTE OF COMPLIANCE BY ECUADORIAN GULF OIL CO. WITH ITS OBLIGATIONS TO PAY ALL SUMS DUE TO THE GOVERNMENT, WHICH THEREFORE RENDERS CADUCITY INAPPLICABLE, HEREBY ASSURES THE GOVERNMENT OF THE UNITED STATES..." ETC.

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(B) SECOND SENTENCE OF PARA. 2 WOULD BE AMENDED TO READ: "THE GOVERNMENT OF ECUADOR ACCORDINGLY WILL PAY GULF A JUST PRICE FOR THE ABOVE DESCRIBED PARTICIPATION IN ACCORDANCE WITH THE LAWS OF ECUADOR AND CONSISTENT WITH THE PRINCIPLES OF INTERNATIONAL LAW."

(C) PARA. 2, SUBPARA. 2, DELETE: "AS DETERMINED PURSUANT TO ANNEX 1".

(D) LAST PARA., SUBPARA. 1 WOULD BE AMENDED TO READ: "AUDIT BY A MUTUALLY ACCEPTED AUDITING FIRM IN ORDER TO DETERMINE..." ETC.

(E) ADD A NEW FINAL PARA.: "DETAILS FOR IMPLEMENTING THE FOREGOING WILL BE WORKED OUT BETWEEN THE GOVERNMENT AND GULF."

UNDER THIS APPROACH, ANNEX 1 WOULD BE ENTIRELY OMITTED.

3. IF GOE WERE PREPARED, IN VIEW OF ASSURANCES WHICH GULF WOULD HAVE GIVEN IT AS TO PAYMENT OF ITS OBLIGATIONS TO THE GOE, TO SEND TO THE USG A NOTE OF THE ABOVE TENOR, WE CONTEMPLATE REPLYING WITH A NOTE AS FOLLOWS:

"THE EMBASSY OF THE UNITED STATES OF AMERICA HAS THE HONOR OF ACKNOWLEDGING RECEIPT OF THE NOTE OF THE GOVERNMENT OF ECUADOR DATED SEPTEMBER 30, 1976, WHICH READS AS FOLLOWS:...

"ON BEHALF OF MY GOVERNMENT, I WISH TO EXPRESS APPRECIATION FOR THE FOREGOING ASSURANCES, WHICH MY GOVERNMENT, NOTWITHSTANDING ITS ESTABLISHED POSITION ON THE VALUATION OF FOREIGN ASSETS, ACCEPTS AND TRANSMITS IN THE CONFIDENCE THAT EARLY CONSUMMATION OF PURCHASE OF

GULF'S ASSETS IN ACCORDANCE WITH THEIR TERMS WILL LEAD TO A SETTLEMENT MUTUALLY ACCEPTABLE TO ECUADOR AND GULF AND THUS RESOLVE A PROBLEM IN THE JOINT INTEREST OF THE GOVERNMENTS OF ECUADOR AND THE UNITED STATES. SUCH A RESOLUTION IN TURN WILL CONTRIBUTE TO ENHANCING THE

CLIMATE FOR FOREIGN INVESTMENT IN ECUADOR." KISSINGER  
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<< END OF DOCUMENT >>

## Message Attributes

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